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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 CHET DUDA,

8 Plaintiff,

Case No. 2:16-cv-3044-KJD-CWH

9 v.

10 BRIAN WILLIAMS, et al.,

11 Defendant.

ORDER

12 Before the Court is Defendants' Motion for Summary Judgment (#37) to which Plaintiff
13 Chet Duda responded (#40), and Defendants replied (#41). Mr. Duda has also filed a sur-reply
14 (#41), which the Defendants now move to strike (#44).

15 In this § 1983 action, Mr. Duda claims various prison officials were deliberately
16 indifferent to the conditions of his confinement while he was lawfully incarcerated at High
17 Desert State Prison in Nevada. In late July 2016, a defect in the H.V.A.C. unit of Duda's cell
18 spiked the temperature in the cell and restricted air flow. High Desert repaired the unit in five
19 days during which time Duda and his cellmate endured increased temperatures and stale air. Mr.
20 Duda pursued administrative relief through High Desert's internal grievance program filing an
21 emergency grievance an informal grievance and subsequent appeals. When High Desert denied
22 those grievances and their related appeals, Mr. Duda brought this action. He claimed the high
23 temperatures in his cell caused him neurological damage that High Desert has refused to treat.
24 Duda seeks an injunction requiring High Desert to pay for off-site neurological evaluation,
25 neurological treatment, and monetary damages.

26 The Eighth Amendment protects inmates from suffering cruel and unusual punishments at
27 the hands of state actors. The amendment prohibits inhumane prison conditions, but it does not
28 mandate comfortable prison conditions. When the alleged Eighth Amendment deprivation arises

1 out of the conditions of an inmate's confinement, the inmate must demonstrate both (1) that the
2 conditions of his confinement posed an objectively substantial risk of serious harm and (2) that
3 prison officials subjectively understood that risk and were deliberately indifferent to the inmate's
4 health or safety. Here, Duda has not presented evidence that the increased temperature of his cell
5 posed an objective risk of serious harm. And even if he could show a substantial risk of harm,
6 Mr. Duda's own admissions demonstrate that multiple prison officials made reasonable efforts to
7 fix the H.V.A.C. unit in his cell and therefore were not indifferent to his health and safety.
8 Finding no deliberate indifference, the Court grants Defendants' Motion for Summary Judgment
9 (#37).

10 **I. Background**

11 **A. Factual Background**

12 In July of 2016, Mr. Duda was a lawfully incarcerated inmate at the High Desert State
13 Penitentiary in Indian Springs, Nevada. On July 28, 2016, Duda was transferred to cell 2D-14,
14 which he shared with one cellmate. (#6, at 4). Not long after Duda's arrival at 2D-14, Duda
15 observed that the vent door on the H.V.A.C. system was sealed shut. Id. at 3. The defective vent
16 door prevented cool air from circulating through the cell. Id. This caused the cell temperature to
17 increase and caused Duda's cellmate to "[act] a little weird." Id. Duda attributed his cellmate's
18 abnormal behavior to the heat and poor ventilation. Id. According to Duda, the increased
19 temperature in cell 2D-14 was "very uncomfortable" and "dangerously unbearable." Id. at 4.

20 Duda complained of the heat and poor ventilation in his cell to at least four prison
21 officials: Senior Officer Flores-Nava, Senior Officer Brettenbach, Sergeant Rivera, and
22 Corrections Officer Choyce. Id. Upon receipt of Duda's complaints, both Flores-Nava and
23 Brettenbach immediately contacted the maintenance department and submitted work orders to
24 fix the defective vent door. Id. Neither officer entered Duda's cell to examine the H.V.A.C.
25 system. Id. at 5. Duda also alerted Officer Choyce to the problem who told him "there [was]
26 nothing [Choyce] could do" and that Duda "would have to live with the situation." Id.
27 Maintenance answered the work order on August 2, 2016. (#37, Exh. A at 1). They discovered
28 that the poor air flow and high temperatures were indeed caused by a defective "exhaust damper"

1 and clogged filter; the maintenance staff repaired both. Id.

2 Five days elapsed between Duda's first complaint and maintenance repairing the
3 H.V.A.C. system in cell 2D-14. In the interim, Duda filed an emergency grievance with prison
4 staff to fix the cell's H.V.A.C. unit. Id., Exh. 1. Officials determined that Duda's complaints did
5 not constitute an emergency under their relief guidelines and denied the emergency grievance.
6 (#37, Exh. B). Sergeant Rivera notified Duda that the broken H.V.A.C. unit was not an
7 emergency and instructed him to file an informal grievance. (#6, at 4–5). In addition, Sergeant
8 Rivera “put in a request to maintenance” to fix the problem. Id. at 5. Duda filed an informal
9 grievance on August 2, 2016. (#6, Exh. 4). Before that grievance was resolved, he was
10 transferred out of cell 2D-14. (#40, at 2). According to prison officials, Duda's transfer out of
11 cell 2D-14 mooted his grievance, which they denied. (#37, Exh. B, at 4). Duda appealed that
12 denial twice. (#40, Exh. A, at 5–8). In Duda's appeals, his claims shift from a request to repair
13 his H.V.A.C. unit to complaints about alleged injuries he suffered during the five-day period that
14 his cell air conditioning was broken. Id. High Desert ultimately denied Duda's appeals finding
15 that it had offered solutions to Duda's health issues that Duda refused. Id. at 7.

16 **B. Procedural Background**

17 After Duda exhausted his administrative appeals, he filed this case. Initially, Duda
18 brought three claims against five separate defendants all of whom were affiliated with High
19 Desert State Prison. Those defendants were Warden Brian Williams, Senior Corrections Officer
20 Flores-Nava, Senior Corrections Officer Brettenbach, Corrections Officer Choyce, and Sergeant
21 Rivera. (#6). Duda brought two claims for violations of his Eighth Amendment right to be free
22 from cruel and unusual punishment and a Fifth Amendment due process claim. Id.

23 As is required by statute, the Court screened Duda's complaint. The Court's screening
24 order dismissed Duda's due process claim as futile. It also dismissed Warden Williams without
25 prejudice. (#5). The Court has since dismissed Senior Corrections Officer Brettenbach under
26 FRCP 4(m). (#50). Left are Duda's Eighth Amendment claims against three remaining
27 defendants: Senior Officer Flores-Nava, Corrections Officer Choyce, and Sergeant Rivera. Those
28 defendants now move for Summary Judgment on each of Duda's claims.

1 **II. Legal Standard**

2 **A. Title 42 U.S.C. § 1983**

3 Title 42 U.S.C. § 1983 “provides a federal cause of action against any person who, acting
4 under color of state law, deprives another of his federal rights.” Conn v. Gabbert, 526 U.S. 286,
5 290 (1999). Section 1983 does not provide its own substantive rights to plaintiffs. Albright v.
6 Oliver, 510 U.S. 266, 271 (1994). Rather, it provides procedural protections for rights granted
7 elsewhere. Id. Section 1983 claims are two-fold. The plaintiff must show both (1) that a person
8 acting under the color of state law engaged in conduct that (2) deprived the plaintiff of a right,
9 privilege or immunity guaranteed by the Constitution or federal statute. Parratt v. Taylor, 451
10 U.S. 527, 535 (1981), overturned on other grounds by Daniels v. Williams, 474 U.S. 327 (1986).

11 **B. Summary Judgment**

12 Summary judgment is appropriate where the pleadings, depositions, answers to
13 interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine
14 issue as to any material fact. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317,
15 322 (1986). An absence of material fact entitles the moving party for judgment as a matter of
16 law. Id. The moving party bears the initial burden to demonstrate the absence of material fact.
17 Celotex, 477 U.S. at 323. If the moving party makes such a showing, the burden shifts to the
18 non-moving party to present specific facts that demonstrate a genuine factual dispute for trial.
19 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Fed R. Civ. P.
20 56(e). The Court makes all justifiable inferences in favor of the nonmoving party. Anderson v.
21 Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Yet, a party’s uncorroborated or self-serving
22 testimony—without more—is insufficient to create a genuine factual dispute. Villiarimo v.
23 Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

24 **III. Analysis**

25 Duda claims that enduring high temperatures and stagnant air in his cell for five days
26 amounts to cruel and unusual punishment under the Eighth Amendment. Alternatively, he argues
27 that prison officials were deliberately indifferent to his risk of serious harm by failing to
28 immediately repair his H.V.A.C. unit or provide other relief from the heat and poor ventilation.

1 Their indifference, he contends, caused lasting neurological damage that High Desert refuses to
2 recognize and treat.

3 The Eighth Amendment “embodies broad and idealistic concepts of dignity, civilized
4 standards, humanity, and decency. Estelle v. Gamble, 429 U.S. 97, 102 (1976). In the prisoner
5 context, the Eighth Amendment (1) protects inmates from suffering cruel and unusual
6 punishment through excessive force, and (2) it ensures humane conditions of confinement. See
7 Farmer v. Brennan, 511 U.S. 825, 833–34 (1994). The Constitution does not mandate
8 comfortable prisons. Rhodes v. Chapman, 452 U.S. 337, 349 (1981). It does, however, protect
9 prisoners from inhumane conditions of confinement. Farmer, 511 U.S. at 832. The Court
10 considers multiple factors to determine whether conditions of confinement are inhumane, as
11 opposed to merely uncomfortable, including whether the inmate has adequate food, shelter,
12 clothing, and medical care. Id.

13 In cases arising out of the conditions of an inmate’s confinement, the Eighth Amendment
14 examines the interplay between the objective risk of harm posed by the inmate’s conditions of
15 confinement and the prison officials’ subjective awareness of that risk. First, the inmate must
16 demonstrate that his confinement caused an objective risk of harm so serious that the inmate was
17 subject to cruel and unusual punishment. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012),
18 overruled on other grounds by Peralta v. Dillard, 744 F.3d 1076, 1083 (9th Cir. 2014).
19 Importantly, “routine discomfort inherent in the prison setting” does not rise to the level of cruel
20 and unusual punishment under the Eighth Amendment. Johnson v. Lewis, 217 F.3d 726, 731 (9th
21 Cir. 2000). Rather, the inmate must demonstrate that the deprivation denied the “minimal
22 civilized measure of life’s necessities.” Rhodes, 452 U.S. at 347.

23 If the inmate demonstrates an objectively substantial risk of harm, he then must
24 demonstrate that prison officials were subjectively aware of that risk of harm and were
25 deliberately indifferent. Snow, 681 F.3d at 985. The official must both be aware of facts from
26 which he could infer a serious risk of harm to the inmate, and the official must actually draw that
27 inference. Farmer, 511 U.S. at 837. Once the official is subjectively aware of the inmate’s risk of
28 serious harm, he is deliberately indifferent if he disregards that risk. Id. In essence, prison

1 officials must have known of the plaintiff's risk of suffering serious harm and disregarded that
2 risk.

3 While the Eighth Amendment ensures adequate heating, it does not necessarily guarantee
4 "comfortable temperature." Graves v. Arpaio, 623 F.3d 1043, 1049 (9th Cir. 2010) (quoting
5 Keenan v. Hall, 83 F..3d 1083, 1091 (9th Cir. 1996)). One indicator of whether the temperature
6 is dangerous, as opposed to merely uncomfortable, is that the temperature poses "a substantial
7 risk of serious harm" to the inmate. Graves, 623 F.3d at 1049. Multiple conditions of the
8 inmate's confinement may combine to demonstrate an Eighth Amendment violation. Wilson v.
9 Seiter, 501 U.S. 294, 304 (1991). For example, frigid cell temperatures combined with officials'
10 refusal to issue blankets to inmates may rise to the level of substantial risk of serious harm. Id.

11 **A. The increased temperature and poor air flow in Duda's cell for five days do not**
12 **rise to the level of cruel and unusual punishment and the defective H.V.A.C. unit**
13 **did not pose an objective risk of serious harm**

14 Duda has not provided evidence that the increased temperature and lack of ventilation in
15 his cell from July 28, 2016 to August 2, 2016 presented a serious risk of substantial harm nor is
16 such harm obvious here. Duda claims that either problem—the heat or poor ventilation—is
17 enough to show an Eighth Amendment violation. Turning first to the increased temperature in
18 cell 2D-14, Duda claims that the broken vent door prevented cool air from entering the cell and
19 caused the temperature to reach 115 degrees. (#40, at 4–5). Work orders show that Duda was
20 correct that a defect in the H.V.A.C. vent caused the door to seal, which prevented cool air from
21 entering the cell.(#37, Exh. A). However, there is no evidence of the cell's actual temperature
22 during that time. Likewise, Duda presents no evidence of the specific risks of harm associated
23 with residing in a cell at that temperature. Therefore, Duda has not shown that the conditions of
24 his confinement posed an objective risk of serious harm.

25 The objective prong of the Eighth Amendment requires Duda to demonstrate that the
26 conditions of his confinement presented an objective risk of serious harm. Rather than present
27 specific evidence of his risk of harm, Duda cites to Gates v. Cook for the proposition that
28 excessive heat is "a violation of the Eighth Amendment." 376 F.3d 323 (5th Cir. 2004). There,
the Fifth Circuit examined a claim of excessive heat by death row inmates in Mississippi. During

1 the summer months in Mississippi, the temperature averaged ninety degrees with high humidity.
2 Id. at 334. At the time, Death Row was not airconditioned. Id. The inmates claimed that the high
3 temperatures combined with the permanent lack of air-conditioning posed a serious risk of harm.
4 Id. In support, the inmates presented expert testimony that based on their particular
5 circumstances, the high heat index made it “likely that . . . that an inmate will die of heat stroke
6 or some other heat-related illness.” Id. (internal quotations omitted). As a result, the Court upheld
7 an injunction requiring prison officials to provide fans, extra showers, and ice water on days
8 where the heat index reached ninety. Id.

9 Admittedly, Gates and Duda present a similar argument; namely, high temperatures in a
10 cellblock create inhumane conditions of confinement in violation of the Eighth Amendment.
11 Under the surface, however, these cases are different. First, the Gates Court could objectively
12 verify the temperature of a non-airconditioned cellblock based on the heat index. Duda, on the
13 other hand, presents no evidence of the actual temperature of his cell. At times, he claims that the
14 temperature reached 100 degrees (#6, at 3). At other times he claims the temperature exceeded
15 115 degrees (#40, at 4). Besides Duda’s estimates, there is no evidence of the cell’s temperature.
16 Despite cell 2D-14’s defective venting, Duda resided in an otherwise air-conditioned facility.
17 Unlike the Gates plaintiffs who resided in a non-air-conditioned cell block, Duda benefited from
18 the cooler air surrounding his cell and had a reprieve from the heat each time he left his cell. Not
19 to mention, Duda only endured the heat for the short time it took maintenance to repair the
20 H.V.A.C. door.¹ Additionally, Duda presents no evidence that the heat in his cell posed a risk of
21 heat stroke or heat related illness. In Gates, the inmates presented expert testimony that their
22 particular circumstances posed serious risks to their health including death. Duda presents only
23 his testimony that he risked harm, which is insufficient to create an issue of fact.

24 At bottom, unlike Gates, where inmates presented evidence of (1) the actual temperature
25 in the unit and (2) that the temperature presented a serious risk of heat stroke or other illness,
26 Duda has not presented any evidence of the temperature of his cell or the specific risk of harm

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28 ¹ The Court notes that even it would be hard-pressed to have a defective H.V.A.C. unit repaired in less than
five days in its own courtroom in the middle of the summer.

1 that it posed to him. Accordingly, Duda has failed to show that the temperature in his cell caused
2 a serious risk of substantial harm.

3 Similarly, Duda fails to demonstrate that the poor ventilation in his cell amounts to an
4 Eighth Amendment violation. Poor ventilation in a prison cell rises to the level of cruel and
5 unusual punishment when it “undermines the health of inmates and the sanitation of the
6 penitentiary.” Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996) (citing Hoptowit v. Spellman,
7 753 F.2d 779, 784 (9th Cir. 1985) (internal quotations omitted). Threats to the health of inmates
8 and sanitation of the facility include “fumes of feces (thrown by some inmates), the smell of
9 urine and vomit as well as other stale bodily odors.” Id. Duda’s ventilation claim, however, does
10 not make any such argument. Rather, his claim relates merely to the H.V.A.C. unit’s inability to
11 circulate cool air through the cell. (#40, at 8). Accordingly, the poor ventilation in Duda’s cell
12 during that five-day period did not subject him to a serious risk of substantial harm.

13 **B. Prison officials were not indifferent to the conditions of Duda’s confinement; on**
14 **the contrary, multiple officers worked to fix the defective H.V.A.C. unit**

15 Even if Duda could demonstrate that the increased heat in his cell posed an objective risk
16 to his health and safety, he has failed to demonstrate that prison officials knew of that risk and
17 were deliberately indifferent to his wellbeing. In fact, Duda’s own opposition shows the
18 opposite; both Flores-Nava and Rivera acted immediately to get the cell’s H.V.A.C. unit
19 repaired. Deliberate indifference requires both subjective knowledge of a risk of serious harm
20 and failure to mitigate that risk. The Court must first inquire into the official’s state of mind at
21 the time of the alleged deprivation to determine whether the official was aware that the
22 conditions of the inmate’s confinement posed a risk of serious harm. Wilson v. Seiter, 501 U.S.
23 294, 299 (1991). The official must “both be aware of the facts from which the inference could be
24 drawn that a substantial risk of serious harm exists, and he must also draw the inference.”
25 Farmer, 511 U.S. at 837. Once the official draws that inference, a voluntary act or omission with
26 indifference to that risk satisfies the subjective element. Id. at 840.

27 Here, Duda has not shown that any officer was subjectively aware that he was at risk of
28 serious harm. Duda admits that officers did not enter his cell, nor did they measure the cell’s
temperature. (#40, at 9–10). Without entering the cell or measuring its temperature, there is no

1 evidence that any of these defendants drew the inference that the temperature of Duda's cell
2 posed significant danger. Then, after Duda complained of the heat to four different officers, three
3 of them contacted maintenance to schedule work orders. (#6, at 4) ("both senior officers made
4 attempts to reach maintenance and left messages about no ventilation in the cell"); id. at 5
5 (Sergeant Rivera "also put in a request to maintenance"). Duda also admits that the officers'
6 conduct "may have been unintentional," which undercuts his claim that officers deliberately
7 avoided fixing his cell or that officers were indifferent to his plight. (#6, at 5).

8 Nevertheless, Duda maintains that the officers' conduct rises to a constitutional violation
9 because they "made [no] attempt to open the cell door to check the adverse conditions" in his
10 cell. (#40, at 4). The Eighth Amendment does not guaranty perfect behavior by prison officials.
11 Rather, the Eighth Amendment requires only that the official takes reasonable measures to abate
12 the inmate's risk of harm. Farmer, 511 U.S. at 847. It would have been commendable for any of
13 these corrections officers to personally inspect Duda's cell or attempt to repair the H.V.A.C. vent
14 door. However, the Constitution does not require them to take such action. It was reasonable for
15 each officer to instead contact maintenance and request a work order under these circumstances.
16 Given that the officers' actions were reasonable, their conduct cannot have risen to deliberate
17 indifference.

18 There is no doubt that the five days Duda spent in a hot cell were uncomfortable.
19 Uncomfortable conditions of confinement, however, are not unconstitutional conditions of
20 confinement. Finding no Eighth Amendment violation, the Court grants Defendants judgment as
21 a matter of law. As a result, this Court need not determine the issue of qualified immunity or the
22 Defendants' remaining arguments.

23 **IV. Conclusion**

24 Accordingly, it is HEREBY ORDERED that Defendants' Motion for Summary Judgment
25 (#37) is **GRANTED**;

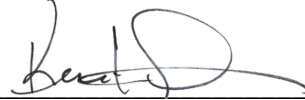
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1 IT IS FURTHER ORDERED that Defendants' Motion to Strike (#44) and Plaintiff's
2 Motion for Status Check on Summary Judgment (#51) are **DENIED AS MOOT**.

3 Dated this 5th day of March, 2019.

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6 Kent J. Dawson
7 United States District Judge
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